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Action by Mary C. Penick Walker against Penick's Executor. Judgment for defendant, and plaintiff brings error. Affirmed.

Easley & Bouldin, of Houston, and *McGuire, Riely, Bryan & Eggleston*, of Richmond, for plaintiff in error.

John Martin, of Houston, for defendant in error.

DEAN v. DEAN.

March 21, 1918.

[95 S. E. 431.]

1. Pleading (§ 271*)—Amendment—Affidavit—Statutes.—Under Acts 1914, c. 331, providing that the court at any time on just terms may permit any pleading or proceeding to be amended, or material supplemental matter to be set forth, and at any stage of the proceeding must disregard any error or defect not affecting substantial rights, in assumpsit between partners, where defendant failed to file with his plea of nonassumpsit the proper affidavit, under Code 1904, § 3282, denying the partnership, the court properly permitted him to amend on the same day the plea was filed by preparing and filing such affidavit.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 320.]

2. Continuance (§ 30*)—Amendment of Pleading—Surprise.—If plaintiff had been taken by surprise by the court's allowing defendant to amend his pleadings, the court should have continued the case on his motion.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 273, 274.]

3. Appeal and Error (§ 383*)—Amendment of Pleadings—Failure to Ask Continuance.—Where plaintiff went on with the trial, not asking for continuance, but contented himself with a mere exception to the court's action in allowing defendant to amend by filing a necessary affidavit, and took his chances before the jury on the evidence submitted, under the circumstances, none of the evidence being certified, so that the Supreme Court of Appeals is without facts showing plaintiff's rights have been injuriously affected, judgment for defendant on the verdict should be affirmed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

Error to Circuit Court of City of Alexandria.

Action by Edward S. Dean against Charles A. Dean. To review judgment for defendant, plaintiff brings error. Affirmed.

Daniel T. Wright and T. Morris Wampler, both of Washington, D. C., for plaintiff in error.

Gardner L. Boothe, of Alexandria, for defendant in error.

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.